Attorney's Docket No. 1033048-000031

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Patent Application of	MAIL STOP AF
Glenn Ferguson et al.	Group Art Unit: 2153
Application No.: 09/766,649	Examiner: Sean M Reilly
Filed: January 23, 2001	Confirmation No.: 4295
For: A DATA MODEL FOR AUTOMATED SERVER CONFIGURATION	

PRE-APPEAL BRIEF REQUEST FOR REVIEW

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

Applicant requests review of the final rejection of claims 1-22 set forth in the Office Action dated November 29, 2005. No amendments are being filed with this request.

This request is being filed with a Notice of Appeal.

The claims are directed to a data model that represents the configuration of hardware and software entities in a computer network. A brief description of the claimed subject matter is set forth in the response filed September 21, 2005. See the last paragraph on page 9, and the first two paragraphs on page 10.

Rejection Under 35 U.S.C. § 101

Claims 1-7 and 9-22 stand finally rejected under 35 U.S.C. § 101, as allegedly being directed to non-statutory subject matter. Each of independent claims 1, 6 and 9 recites "A configuration data model stored in a database on a computer readable medium..." The rejection characterizes the claimed subject matter as nonfunctional descriptive material, specifically, "merely a compilation and arrangement of data."

The rejection does not conform with the guidelines for the examination of computer-related inventions, as set forth in MPEP §2106. Specifically, subsection IV.B.1.(a) states:

> In contrast, a claimed computer-readable medium encoded with a data structure defines structural and functional interrelationships between the data structure and the computer software and hardware components which permit the data structure's functionality to be realized, *and is thus statutory.* (emphasis added)

Since the rejected claims explicitly recite a configuration data model that is "stored... on a computer readable medium," they clearly fall within this definition of statutory subject matter.

Furthermore, the claimed data is not "nonfunctional" descriptive material as alleged in the Office Action. Rather, as recited in the claims, the data model is stored in a database, and relates configuration objects of a computer network, such as software, network and hardware entities, to one another and to other configuration objects. The MPEP defines nonfunctional descriptive material as "material that cannot exhibit any functional interrelationship with the way in which computing processes are performed..." In the context of the claimed invention, the computer interacts with the information stored in a database to configure servers and the like. This information constitutes structured data that controls functions performed by the computer.

The rejection of claims 1-7 and 9-22 under 35 U.S.C. § 101 does not conform with the Patent Office guidelines, and is not supportable.

Rejections Under 35 U.S.C. § 103

Claims 1-11 stand finally rejected as being unpatentable over the Galis et al patent (US 5,175,800) in view of the Bruck et al patent (US 6,801,949). Claims 12-22 stand finally rejected on the basis of the Galis and Bruck patents, in further view of the Zager et al patent (US 6,393,396).

The three criteria for a prima facie case of obviousness, necessary to support a rejection under 35 U.S.C. § 103, are set forth in MPEP §2143. For purposes of brevity, this Request will focus upon the third criterion, namely that "the prior art reference (or references when combined) must teach or suggest *all* the claim limitations" (emphasis added). The rejections of the claims fail to meet this criterion.

Referring to claim 1 as exemplary, the first recited element of the data model is device role IP host entities that represent software roles to be implemented on specific network device IP hosts. The rejection of claim 1 refers to the fact that the Galis patent generally discloses hosts and software logical entities. It does not, however, disclose how the information about these components should be stored in a data model. In particular, it does not disclose that the data model should include device role IP host entities of the type recited in claim 1.

The next element of claim 1 is virtual IP entities that represent virtual IP addresses associated with devices on a network. With respect to this claimed subject matter, the Office Action refers to the Galis patent at column 48, lines 16-17, and column 49, line 26. However, these portions of the patent do not disclose the claimed entities as part of a data model. In fact, they do not contain any reference to *virtual* IP addresses associated with devices on a network.

The next claim element comprises status entities that represent the status of the various software and hardware elements of a computer network. The Office Action refers to the Galis patent at column 11, lines 41-49 in connection with this subject matter. This portion of the patent describes a requirements database that contains information on the ends of a communication network "and their connectivity requirements," as well as a configuration database that maintains a "physical inventory" of the network. These databases are not disclosed as containing entities that represent the *status* of software and hardware elements of the network.

The Office Action acknowledges that the Galis patent does not disclose IP hosts or virtual IP addresses, as recited for the first two elements of claim 1. To this end, therefore, it refers to the Bruck patent at column 14, lines 31-45. While this portion of the patent discloses that virtual IP addresses are known, per se, it does not disclose that information

containing to such should be stored as entities in a data model for configuring objects of a computer network.

For at least the foregoing reasons, therefore, the Office Action has not shown that the Galis patent discloses a configuration data model comprised of the *specific* entities recited in claim 1, either by itself or in combination with the Bruck patent. As such, it fails to meet the criterion of showing that the references, when combined, teach or suggest all the claim limitations. While claim 1 has been discussed as exemplary, the same considerations apply to the other rejected claims.

The rejections of the claims are based upon overly broad generalities, namely that it would be obvious to include *any* information about a network in a data model. The pending claims are not directed to this general concept. Rather, they recite data models having specific combinations of entities that are particularly adapted for the automated provisioning of general purpose servers. Even if one accepts the proposition that it is obvious to store any kind of information in a data model, the Office Action has not identified any teaching that information about a network should be organized in a database containing the specific combinations of entities recited in the claims. The claims recite combinations of elements that are neither disclosed nor otherwise suggested by the references.

Conclusion

The final Office Action does not establish a record that is appropriate to send the Board of Appeals. The rejection under 35 U.S.C. § 101 does not comply with the established guidelines for computer-related inventions. The rejections under 35 U.S.C. § 103 do not meet the criteria for a prima facie case of obvious since, at a minimum, they do not show that the references teach all of the claim limitations, namely a database containing the specific combinations of entities set forth in the claims.

The application is not in a suitable condition for appeal. Withdrawal of the current grounds of rejection is submitted to be in order.

Respectfully submitted,

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